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Citizens' Committee to
Free Earl Browder...

The Browder case

New York

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THE BROWDER CASE



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A SUMMARY OF FACTS. A BRIEF
FOR JUSTICE AND FAIR PLAY
IN AMERICA

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The Citizens' Committee to Free Earl Browder takes this opportunity to express its appreciation to a group of attorneys whose extensive research made this pamphlet possible. Their labors laid the base for this work. The citizens who comprise the committee are confident that American justice and fair play will free Earl Browder, and that this pamphlet will be a vital contribution to the campaign for his release.

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September, 1941

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The Browder Case

EARL BROWDER, foremost Communist leader, twice candidate for President of the United States, is a prisoner today in the Atlanta Federal Penitentiary.

His case has evoked the most widespread interest in the United States: that interest has mounted, rather than subsided since the prison gates closed behind him on March 25, 1941.

Almost two years have passed since he was indicted—in the midst of a political storm against Communists—on an old technical irregularity in a passport application that had lain dormant ten years. He was tried under a newspaper barrage of false stories claiming that the charge against him was for “passport forgery.” The politically-inspired clamor that he be jailed resulted in a penalty of four years imprisonment and a \$2,000 fine—about ten times the penalty customarily given to persons violating the law for venal purposes.

Today hundreds of thousands of Americans have put their signatures to petitions urging that Mr. Browder be freed. Prominent individuals in all walks of life, ranging from the Republican candidate for President in 1940 to scores of international, state and local trade union officials, have expressed themselves on his case. In Latin American countries, his name rings in parliaments that are considering the question of the difference between the United

States, which is democratic, and Germany, where Ernst Thaelmann is also imprisoned for being a Communist.

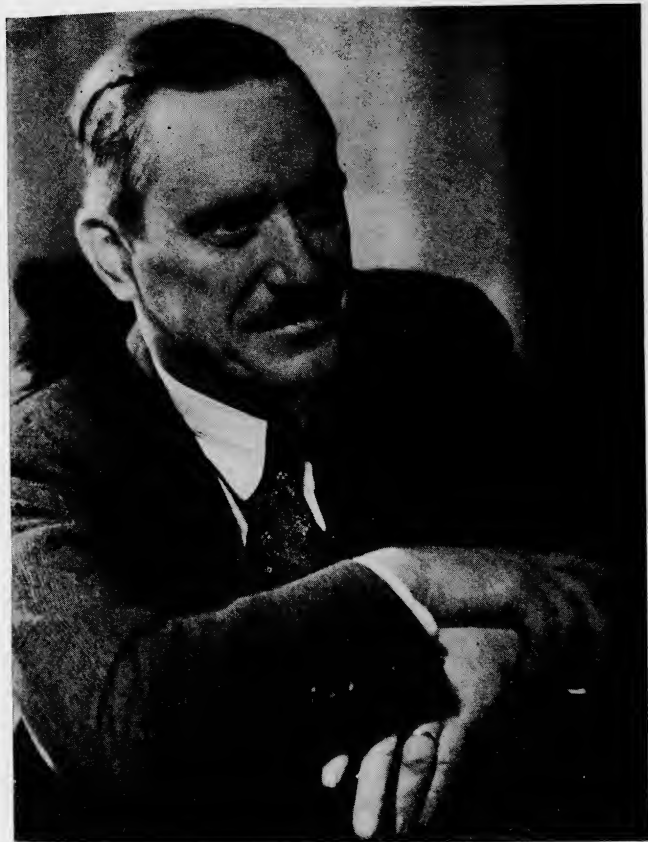
What are the reasons for the widespread and evidently increasing concern over the case? Why is the President of the United States receiving petitions to free this man Browder? Why are people discussing the case in every part of the land and literally in every part of the Hemisphere? Why have CIO and AFL leaders signed individual appeals for the immediate release of Earl Browder from Atlanta Penitentiary?

Reasons Based on Facts

There must be good reasons which prompt men and women of different political beliefs to join in behalf of this American citizen. What are these reasons?

An examination of his case, his record and pertinent surrounding circumstances discloses the following facts:

1. Contrary to general belief, Earl Browder was *not* charged with nor convicted of obtaining or using a false passport. (The passport he was penalized for using was not false or defective in any manner and this is admitted.)
2. No issue of moral turpitude was raised against him; and the government conceded that no question of moral turpitude was involved.
3. His sentence to four years and a \$2,000 fine is probably the most severe ever meted out for a like charge, and when on September 25, 1941, he had already spent six months in Atlanta Penitentiary, this exceeded sentences in 95% of similar cases.
4. His trips abroad were for unselfish ends, made at



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EARL BROWDER

the peril of imprisonment and death from reactionaries and fascists the world over.

5. He has behind him a record of 30 years of devotion to the labor movement, marked by personal integrity and reputation of the highest order unchallenged even by his bitterest political enemies, and he does not take second place to any man for a record of opposition to Hitlerism.

Let us proceed to establish each of these five significant facts, and perhaps at the conclusion the reader too will join with thousands of his fellow Americans who are petitioning the President of the United States for Mr. Browder's release.

Trick and "Punishment"

In November, 1939, Earl Browder was indicted by the Federal authorities in New York on two counts under *Section 220, Title 22*, of the United States code. That section reads as follows:

Whoever shall wilfully and knowingly make any false statement in an application for passport with intent to induce or secure the issuance of a passport under the authority of the United States, either for his own use or the use of another, contrary to the laws regulating the issuance of passports or the rules prescribed pursuant to such laws, or whoever shall wilfully and knowingly use or attempt to use or furnish to another for use any passport the issue of which was secured in any way by reason of any false statement, shall be fined not more than \$2,000 or imprisoned not more than five years or both.

"False statement?" In filling out a long questionnaire in an application blank for a passport six years before, *one word*—it was contended—was inaccurate. (Have you

ever filled out a questionnaire in applying for a driver's license? And are you sure you got every word right?)

Mr. Browder was brought to trial in New York City, January 17, 1940. The case against him essentially revolved around the application for a passport he had made in 1934. He had shown this passport to the port authorities to identify himself upon returning from a trip to Europe in 1937, and another to Spain in 1938 on missions of aid to the Spanish Republic by international labor. The passport itself was admittedly in perfect order—it had been issued to him in his name, Earl Russell Browder, on September 1, 1934, and it bore the notation that he was born in Wichita, Kansas, on May 30, 1891. The passport carried his photograph and the government seal.

Contrary to a cultivated misconception, no issue of false passport was involved. The use of the passport in 1937-1938 was considered criminal only because Mr. Browder, when applying for that passport in 1934, used the word "none" in replying to a question in the application blank in a way which was later construed to mean that he had never had a passport.

Admittedly this was the sole charge. He was indicted on two counts—one count for "using" the passport in 1937 upon his return to this country from a mission to Moscow where he went to meet with other men to consider ways and means for international action to save the Spanish Republic, which was then fighting off the invaders from Italy and Germany; the other for the use of the same valid passport in 1938 when he went to Spain to visit the American volunteers then fighting for the Spanish Republic. He was arrested and held on bail of \$7,500, about 7½ times

the usual bail. Five days after he was brought to trial before United States District Judge Alfred C. Coxe, he was convicted. Immediately upon the jury's verdict, without the usual investigation by probation officers of his personal record—which is concededly unblemished—he was sentenced to four years imprisonment in a Federal Penitentiary, two years on each count (about ten times the average sentence) to run consecutively, and he was also fined the sum of \$2,000 (about twenty times the ordinary fine). The two-year terms were in themselves unusual, but the severity of his punishment was enormously magnified by the consecutive sentences whereas in the usual course, such sentences are made to run concurrently.

Many close observers of the case have, at this point, asked the question: does the nature of the charge merit the severity of the penalty? An examination here of all other passport cases is therefore in order.

The Record Shows

Since the enactment of the Passport Statute, under which Mr. Browder was prosecuted, approximately 125 passport cases of one kind or another have been tried in the Southern District of New York—where Browder's case was tried. The Southern District embraces Manhattan and the Port of New York, the most important point of entry in America. These cases appear in the public dockets of the District Court which contain the records of the proceedings against each defendant, from indictment by the Grand Jury to sentence by the District Judge. They are available to all who are interested.

The picture presented by these cases discloses this: passport charges have not been in the past and are not even at present considered serious violations of law. Legal experts indicate that the treatment of these cases was similar to the treatment of numerous liquor law violations during Prohibition days, or to petty offenses such as "blue law" violations. This conclusion is based upon an examination of the dockets in approximately 125 odd cases since the present passport statute was adopted. Consider them:

Thirty defendants—of the 125 or so cases—received suspended sentences. About 25 cases, or 20 per cent, were not even brought to trial by the United States authorities.

Only forty-eight received prison terms, the majority three months or less.

Eight were punished by fines alone.

Closer inspection of the cases of those who were given prison terms reveals that twenty-eight were sentenced to three months or less; thirteen to six months or less; in four cases where the defendants were sentenced to one year, sentence was suspended; twelve were sentenced to a year and a day, but of these, five had their sentences suspended.

Two were sentenced to eighteen months and actually served their sentences. Of three cases where two-year penalties were meted out, two were suspended and the third went to a defendant found guilty of conspiracy to defraud the government.

One person sentenced to three years had his sentence suspended; two sentenced to five years received similar treatment and a third who actually went to prison had been found guilty of forgery.

One defendant with a criminal record was given seven and a half years, but that sentence was suspended.

Of the 125 only five defendants punished by terms of more than a year and a day actually went to jail.

BELOWDER WAS SENTENCED TO FOUR YEARS IN PRISON AND FINED \$2,000.

Furthermore, the scale and treatment of fines also bear out the conclusion that passport violations have never been looked upon as grave offenses.

In two cases fines of \$1,000 and \$1,500 were given only to be suspended.

Of the fines actually paid—two were \$100, two were \$200 and four were \$500, two of the latter being levied in the notorious Revel Brothers case.

Lest it be thought that the four-year sentence given Earl Browder is an indication of a change in policy of the government toward passport cases, the Revel Brothers case is well worth considering.

William and Harry Glaser, alias Billy and Harry Revel, were two English citizens who were indicted for using false passports to enter this country in 1936 and 1937. They had made large fortunes here in the music and motion picture fields. They pleaded guilty to these charges. Yet these two aliens, who according to the law had no right to a passport, who had no legal right to enter the country, were let off with fines of \$500, and given 50 days to pay this petty sum. Furthermore, when indicted in 1940, they pleaded not guilty, yet one was held in only \$1,000 bail and paroled until he raised the bail, the other was released in the custody of his lawyer.

Another significant fact to establish the minor character of the offense is the amount of bail required by the Court. Although the records show that the overwhelming number of defendants, 95 per cent at least, were non-citizens, bail was under \$5,000. One exception was a vast conspiracy in which bail was fixed against two defendants in the sum of \$25,000. But that was reduced to \$7,500 on their lawyers' application. (This was a passport case in which one of the witnesses to the passport application was the notorious "Chowderhead" Cohen, strikebreaker extraordinary. He was apprehended and bail was set at the typical misdemeanor bail of \$1,000.)

Revealing Facts

Although it is true that a large number of defendants were persons whose crime was motivated by the honest desire to overcome difficulties in entering this country, that common factor was not the cause for the light sentences. Many cases clearly reveal moral turpitude, criminality and other features which normally would be grounds for severe penalties, were the passport convictions not treated as trivial offenses bearing little, if any, relation to criminal or unsocial conduct.

A further examination of some of the other passport cases is valuable at this point:

R.G., with a criminal record and an unexpired term in the Colorado Penitentiary, was let off with a suspended sentence if he were to finish his penitentiary term.

J. Mc. was involved in a false passport racket with immigration officials. He was convicted and sentenced to

eighteen months. The two government officials were given thirty and ninety days.

Mr. and Mrs. A.S. were aliens here on leave. They stayed for years, made over \$100,000; he stole a passport. Both pleaded guilty. He was fined \$1,000 and sentenced to two years, but only if he failed to leave the country. She was fined \$100.

W.E.A. entered this country unlawfully. He was found to have imported a person for immoral purposes. He had been in jail for using the mails to defraud. He received a one-year sentence. Sentence on two other counts totaling up to seven and a half years were suspended.

G.B. was charged with making false statements, securing a passport by fraud and perjury in 1931. He jumped bail. When apprehended in 1939, he was in Leavenworth Prison. His sentence on all three counts was one year.

Messrs. L. and C. were indicted, one for false statements in procuring a passport, the other as a false witness on L's application. Nevertheless, the U.S. Attorney moved to drop the cases and they were dropped, allegedly because the defendants who had made the charges against each other were "extremely unreliable."

F.G. was charged with using a passport issued to another; using that person's name; altering the photograph in the passport; substituting the stamp and the certificate of the State Department; altering the date of seal of the United States. He pleaded guilty and was sentenced by Judge Patterson to sixty days. (Judge Patterson, now Assistant Secretary of War, wrote the opinion affirming the Browder sentence of four years and \$2,000 fine.)

J.W. used a passport issued to another after mutilating

the photograph. He was arrested at Pier 57, New York, for possessing morphine and sentenced to one year in Atlanta. Although he admitted the passport charge, the case was dropped solely because it was deemed that the sentence in the morphine case was sufficient punishment.

G.G. was sentenced to McNeil Island for impersonating an officer, in 1929. In 1928 he had been indicted for unlawfully using a false passport and given a suspended sentence with five years probation. When rearrested for violation of probation, his sentence was fixed at two years.

A. de A. was indicted in March, 1926, on twenty counts, charged with obtaining his passport on false representation, mutilating it and giving it to others. On April, 1926, he was indicted again on five counts on similar charges and pleaded guilty. He was sentenced to four years on the first count, sentence being suspended on the other four counts. Although this defendant was running a passport mill, the March indictment of twenty counts was *nolle prossed* by the U.S. Attorney and a total jail sentence was four years.

First World War

Even in the period of the first World War, when the use of passports was rigidly controlled lest spies or foreign agents use them against the interests of our nation, the courts were exceptionally lenient. This conclusion is based upon the testimony of Attorney General Mitchell Palmer before the Sub-Committee of the Committee of the Judiciary of the United States Senate, on a hearing

held to consider the general amnesty resolution introduced by Senator France.

In the course of his testimony he reported that under the passport provisions of the Espionage Act there were 218 convictions arising out of and during the period of the World War.

A check on the cases and the sentences reveals that the majority were for illegal entry or illegal exit to and from the United States, without a passport or with an illegal passport.

Of the 218 persons convicted, 203 got suspended sentences, fines or prison terms of one year or less. Of the fifteen who received sentences:

6 were sentenced to one year and a day.

6 were sentenced to two years.

2 were sentenced to three years.

One was sentenced to five years; this case involved one Claus Freece. He went to Mexico to offer the German consul there plans for a new gun which was to be used by the American Army in France. He was convicted of unlawful departure in the Western District Court of Texas and sentenced on November 6, 1918, to five years, but was pardoned by President Harding on December 15, 1920, or about two years after his sentence.

The record conclusively reveals that not a single case is comparable to the Browder case, in which an extraordinarily high sentence was meted out, and in fact the six months he had already passed behind the bars of Atlanta Penitentiary on September 25, 1941, exceed the sentences in all but a handful of cases.

The Circumstances

The Browder case is known to the public only because he is a prominent Communist. Were it not for this fact, the case would probably have gone unnoticed; but on the other hand, except for this fact, the case would never have arisen, and Mr. Browder would not now be in Atlanta Penitentiary.

Mr. Browder has been General Secretary of the Communist Party since 1930. All of his activity has been political. It ranged from running for President of the United States (1936 and 1940) to participation in international congresses abroad as the spokesman of his political party.

In the course of his political work, Mr. Browder made the trips to Europe which indirectly led to his imprisonment. Twice, as previously mentioned, he went abroad. The Communist Party of the United States had been urging our government to support the Spanish Loyalist Government fully, insisting that the rebellion was inspired by Hitler and Mussolini. Mr. Browder made many speeches and wrote many articles urging members of his party and Americans generally to give the Loyalist Government unstinted support. The record shows that in November, 1937, the State Department authorized his trip to Spain to act as a newspaper correspondent. Upon his return from these trips, as proof of his American citizenship, he exhibited his passport to the inspectors who went aboard the vessels as they neared Quarantine. On November 17, 1939, he was indicted for "using his passport" (i.e., exhibiting the passport to the inspector aboard ship)

on the dates mentioned, April 30, 1937, and February 15, 1938.

Mr. Browder, through his counsel, George Gordon Battle, Esq., contended that presenting his passport to the inspector in 1937 and 1938 could not constitute a crime: as an American citizen he was entitled to enter his native land as a matter of right *with* or *without* a passport; but the use of the passport in 1937 and in 1938 was being made a crime only because some way had to be found to get around the Statute of Limitations. It was contended that references to previous passports were prejudicial or inflammatory since they were not relevant to the case and Mr. Browder had conceded them.

In connection with his previous passports—i.e., before 1934, although the court record does not disclose it, the facts are that Mr. Browder on a number of occasions in years past traveled to Europe under assumed names when traveling under his own name would have been impossible. Being known as a Communist leader engaged in political activity, it is safe to assume that Earl Browder would have received a cold welcome from the governments of those countries whose borders he would attempt to cross. Reports of those days indicate that it was not even reasonably safe for known Communists to be found traveling through Europe and Asia.

On one of his trips abroad, Mr. Browder spent considerable time in China, which in the early twenties was in a state of great turbulence. To have traveled under his own name would have been suicidal. Naturally he did what any sensible person would have done, in fact what many have done and about which no questions were raised: he traveled under a pseudonym.

Government Aware

The Department of State was at all times aware of the aforementioned journeys. At the trial, a witness for the government testified on cross-examination that the Browder file was earmarked as far back as 1930 as a case in which questions of regularity were involved. Even after the use of the passport in February, 1938 (for which he was indicted) the record of the trial also reveals that in September, 1938, he surrendered this passport, which had expired, and had obtained a new passport. He used the latter afterward in the normal course of his political activities.

It will occur, therefore, to any observer that no serious offense could have been involved when, with full knowledge of all the early circumstances, the State Department issued Mr. Browder a passport in 1934 and renewed it again in 1938.

A moment's reflection will confirm the fact that in every well-known instance of the use of technical charges to imprison someone the government was attacking a person notoriously guilty of anti-social acts, racketeering, high-jacking, organized vice, gross corruption, etc. Nowhere, even by Mr. Browder's most vituperative and unprincipled enemies, has it been charged that he ever engaged in corrupt, anti-social practices.

Whatever exception may be taken to such methods of travel, concededly the purposes of Mr. Browder's trips abroad were political alone, in line with his duties as Secretary of the Communist Party and not for personal lawless ends. In fact, the record is clear that his personal

life has been above reproach. He has never been accused of committing a wrong against a fellow citizen.

Browder the Man

Anyone knowing the man knows there could be no question of moral turpitude involved, as the government itself concedes. Here is a midwestern, cut in the mold of such people's leaders as Eugene V. Debs. Practically self-taught, he has become—whatever differences one may have with his political position—one of America's leading public figures. He commands the respect of hundreds of thousands in the nation—men and women who have read his many books and pamphlets, who have heard his addresses over the radio or in the great Madison Square Garden meetings which were generally filled to the galleries whenever he spoke.

There is no space in this pamphlet, unfortunately, to discuss the man himself in greater detail. Other pamphlets are available that describe the simple, unassuming American that he is. His youth was that of the typical American—he came from poverty, he worked from the age of nine, he was a cash-boy in a Wichita Department Store, a bookkeeper of Rockefeller's Standard Oil Company in Kansas. Early in his life he became a member of the A. F. of L. Bookkeepers Union; he has been an outstanding unionist since. His family was known and respected as hard-working, decent citizens, whose forebears settled in Virginia Colony in the 1600's.

His books and pamphlets are full of the life and problems of this country; they have reached millions.

Throughout them, and in all his activities, is an all-consuming love for the common people, an unswerving opposition to reaction and fascism. His books, articles and speeches portray an untiring concern with the welfare of his fellow-Americans and the constant extension of their democratic rights and their social and economic opportunities.

Recognized by millions as a keen analyst and observer, he was one of the first in this country who foresaw the imminent menace of fascism. He warned against the danger of fascism abroad and of its threat to America. He warned, too, against the appeasers of fascism, and was tireless in his labors to help build a dam against them.

In one form or another, as the conditions dictated, he advocated what in his opinion was the most effective way of halting the menace of fascism.

Outstanding was his advice to the nation to support a policy of collective action abroad and at home which would unite all nations, governments and peoples who were opposed to fascism.

To the very day of his imprisonment, March 25, 1941, he devoted every moment of his time, not to himself and the years of imprisonment which confronted him, but to the issues which in his opinion concerned the very life of the nation and its existence as a democracy.

Reactions to the Case

The reactions to the Browder case have been widespread. Mr. Wendell Willkie, Republican candidate for President in 1940, commenting on the case, made this observation in

an article entitled "Fair Play" in the *New Republic* of March 18, 1940:

Now, you may hate Communism even more than you hate Nazism (and I am surprised at the number of people who do) but if you truly believe in protection of civil liberties, you will wonder whether Browder was sentenced to four years in jail and a \$2,000 fine because he made a false statement on a passport application, or because he was a Communist Party member.

Many have wondered similarly and have come to certain conclusions. They want to see him freed. Some who seek his release are motivated by a sense of justice and fair play; they oppose the extreme harshness of his sentence. They feel that civil rights will be well served by his freedom. Others believe that he was punished for his political opinions and finally there are many who are convinced that the release of this man will inspire the energies of millions of American workers who know and respect him as an indomitable, relentless opponent of Hitlerism.

They want him free to help unite the people against the common enemy of mankind, because they believe that when Browder speaks it is the welfare of the people that dictates his words.

A popular plea for his freedom, after six long months of imprisonment, would be understandable at any time. But today that plea is inevitable. If there be one goal which the American people seek today, it is the final destruction of Hitlerism and its threat to our nation. To achieve that goal, unity of the highest order is needed. Many believe that unity will not be served by keeping a man in jail for his political beliefs or on technical charges. All who seek the welfare of our country and "the final destruction of

Nazi tyranny" agree that justice and fair play are the strongest link in the chain of national unity.

The Present

The Browder case is now out of the hands of the courts and has entered the realm of Executive action. It presents a state of facts in which an appeal for Executive clemency is both proper and reasonable. It is not alone the defendant who has the right to expect such action. American citizens, especially in this most troublous period of our history, are confronted more strongly than ever before with the need to defend the democratic system and institutions which too often in the past were taken for granted. Democracy is not a God-given grant: it must be guarded and fought for constantly.

This man Browder has done no wrong as great as the wrong we shall do ourselves if we keep him in prison. Some of his views may differ from those of the majority of the American people but it is not for that that he should be punished. The people of America will not allow the persecution of a man for his political opinions. They realize it is the exchange of political opinions in the market place of politics that distinguishes this nation from the lands where Hitler has set his iron heel and crushed popular political thinking.

For these reasons and because of the prevalent grave conditions in America and throughout the world, representative and outstanding citizens have come to realize that the continued imprisonment of Earl Browder is an injury not alone to him but to themselves and tends to transform American justice into its opposite.

Furthermore, this man—one of the first in America to sound the warning against Hitler and Hitlerism—is today immobilized from the struggle which requires the common effort of all who abhor fascism. The very fact that he remains in prison is objectively aid to Hitler and encouragement to Hitler's prototypes in this country.

Even had he committed an offense as alleged, the six long months that he has spent in Atlanta Penitentiary is more than exceptional, viewed either as punishment for him or as deterrent for others.

These are the reasons why fair-minded people in all parts of the country and as far off as Argentina and Chile are urging that Earl Browder be freed. These are the reasons why hundreds of thousands of Americans are today signing petitions to the President of the United States to free Earl Browder.

To Help Free Earl Browder

- A) Write or wire President Roosevelt asking for the release of Earl Browder from Atlanta Penitentiary.
- B) Have your trade union, church organization, fraternal order, language and farm group, etc., etc., pass resolutions addressed to President Roosevelt, requesting immediate executive action in this case, and forward copies of the resolutions to Washington, as well as to this Committee.
- C) Organize local Citizens' Committees to Free Earl Browder, composed of trade unionists, educators, church people, writers and artists, social workers, farmers, professional people, etc.
- D) Hold public meetings, where people from all walks of life will address large and small audiences, presenting the facts of the case, and requesting the immediate release of Earl Browder, anti-fascist, from prison.
- E) Secure from this office petitions addressed to President Roosevelt and circulate them for signatures among the people.
- F) The Citizens' Committee is now publishing pamphlets and leaflets, presenting the facts of this case. Distribute this literature.
- G) This is a people's campaign. Help us finance it. Contribute, and have your organization contribute as much as it can. Forward your contribution to the address below.

CITIZENS' COMMITTEE TO FREE EARL BROWDER
1133 Broadway, New York, N. Y.

TOM MOONEY, *Chairman*

ELIZABETH GURLEY FLYNN, *Executive Secretary*

LOUIS WEINSTOCK, *Administrative Secretary*

ROBERT W. DUNN, *Treasurer*

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TOM MOONEY, *Chairman*

ELIZABETH GURLEY FLYNN, *Executive Secretary*

LOUIS WEINSTOCK, *Administrative Secretary*

ROBERT W. DUNN, *Treasurer*

**END OF
TITLE**